Jeffries Lithograph Company, a Subsidiary of the Ticor Printing Group, Inc. *and* Graphic Arts International Union, Local 262, Graphic Arts Internatioanl Union, AFL-CIO-CLC. Case 21-CA-20217

December 16, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND HUNTER

On July 15, 1982, Administrative Law Judge Joan Wieder issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief,[1] and the Charging Party and the General Counsel filed answering briefs in support of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[2] and conclusions of the Administrative Law Judge and to adopt her recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Jeffries Lithograph Company, a Subsidiary of the Ticor Printing Group, Inc., Carson, California, its officers, agents, successors, and assigns, shall take the action set forth in said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

[1] Respondent has requested oral argument. This request is hereby denied as the record, the exceptions, and the briefs adequately present the issues and the positions of the parties.

[2] We find in this proceeding that the General Counsel affirmatively established the substantial continuity in the identity of the employing enterprises, thereby establishing that Respondent was the legal successor to Biltmore Press. Therefore, we do not rely on any implication in the Administrative Law Judge's Decision which can be read to place an initial burden on Respondent to disprove the substantial continuity in the identity of the employing enterprise.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The Act gives employees the following rights:

To engage in self-organization
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
To refrain from the exercise of any or all such activities.

WE WILL NOT refuse to recognize and bargain collectively with Graphic Arts International Union, Local 262, Graphic Arts International Union, AFL-CIO-CLC, as the collective-bargaining representative of:

All full time employees performing any work, processes, operations and products directly related to Lithography, Offset (including dry or wet), Photoengraving, intaglio, gravure, binding and finishing, including any technological or other change, evolution of or substitution for any work process, operation or product now utilized; excluding all other employees, ofifce clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with any of the rights set forth above which are guaranteed by the National Labor Relations Act, as amended.

WE WILL, upon request, bargain collectively with the above-named labor organization as the collective-bargaining representative of the employees in the unit described above, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

JEFFRIES LITHOGRAPH COMPANY, A SUBSIDIARY OF THE TICOR PRINTING GROUP, INC.

DECISION

STATEMENT OF THE CASE

JOAN WIEDER, Administrative Law Judge: This case was heard before me at Los Angeles, California, on March 30, 1982,[1] pursuant to a complaint issued by the Regional Director for Region 21 on June 12, 1981, and which is based on a charge filed by Graphic Arts International Union, Local 262, Graphic Arts International Union, AFL-CIO-CLC (herein called the Union), on April 28, 1981. The complaint alleges that Jeffries Lithograph Company, a subsidiary of the Ticor Printing Group, Inc. (herein called the Company or Respondent), has engaged in certain violations of Section 8(a)(5) and (1) of the National Labor Relations Act, as amended (herein called the Act).

In substance, the complaint alleges that Respondent is a legal successor to Biltmore Press and has violated Section 8(a)(5) of the Act by refusing to recognize and bargain with the Union as the duly certified collective-bargaining representative of certain employees of the predecessor company, Biltmore Press. In its answer to the complaint, Respondent denied the commission of any unfair labor practices and requests that the complaint be dismissed in its entirety.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. A brief, which has been carefully considered, was filed on behalf of Respondent on May 21, 1982.

Upon the entire record of the case, and from my observation of the witnesses and their demeanor, I make the following:

FINDINGS OF FACT

I. RESPONDENT'S BUSINESS

Respondent admits that it is a California corporation engaged in the business of printing and lithographic process printing and has a plant located in Carson, California. It further admits that during a 12-month period commencing January 5, 1981, in the course and conduct of its business it has sold and shipped goods and products and performed services valued in excess of $50,000 directly to customers located outside the State of California. Accordingly it admits, and I find, that it is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Respondent admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

At the outset, it is noted that most of the facts are undisputed. Rather, the contentions of the parties revolve around the inferences and conclusions to be drawn from the facts. Biltmore Press was founded over 35 years ago by Arthur Sollima, the Company's president. The Company was described as a "mom and pop" operation by Respondent, with the management being assumed by Art Sollima, his brother Ben, and their respective wives.

According to the uncontroverted testimony of Larry Rosson, a former employee of Biltmore Press, in 1980 Biltmore Press had five or six production departments[2] which employed a total of about 21 employees plus a shop supervisor.[3] In December 1980, all the employees worked the same shift which started at 7:30 a.m. and ended at 3:30 p.m., 5 days a week. All production employees took the same work breaks. There was a 15-minute morning break which occurred at 8:30 or 9 a.m. There was no afternoon break. Lunch was 30 minutes long and began at noon. The clientele and/or the exact nature of the products and services provided by Biltmore Press were not matters placed in evidence.

On May 1, 1978, Biltmore Press entered into a collective-bargaining agreement with the Union and the Union has been recognized as the exclusive bargaining representative of the following collective-bargaining unit, which has been found appropriate:

> At all times material herein, all full time employees performing any work, processes, operations and products directly related to Lithography, Offset (including dry or wet), Photoengraving, Intaglio, Gravure, Binding and Finishing, including any technological or other change, evolution of or substitution for any work process, operation or product now utilized; excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

The collective-bargaining agreement, by its terms, was to be effective to April 30, 1981.

Jeffries Lithograph is affiliated with the Ticor Printing Group (Ticor) which is a holding company controlling five printing companies.[4] Ticor is a wholly owned subsidiary of Sourthern Pacific Company.

Ticor determined to upgrade their printing capabilities from commercial sheet-fed operations to a heat-set web press. A market analysis indicated that the fastest growing markets in the printing industry were those involving

[1] All dates herein refer to 1981 unless otherwise indicated.

[2] These included a photo department, which had one employee, Joe Prieto; a color department, which had two employees, George Woolston and Ron Belville; stripping department, which had two employees, Frenc Haszillo and Larry Rosson; the preparation department or pressroom, which had eight employees, Duane Heinitz, Mike Carpenter, Willie Cole, Frank Cardella, Eric Spingath, Ollie Simpson, Dave Pickering, and John Beer; and the bindery, which had eight employees, Bob Bittle, Kathy Dever, Theresa Gonzales, Janice (or Jan) McKenzie, Sarah Walker, Wallace Weatherspoon, and David Meitzler.

[3] Supervisor Wayne Clark had undisputed authority to fire. The Union's report of dues paid by members of the unit by November 26, 1980, indicates that 20 employees paid their dues including Clark. Accordingly, it is found that there were between 19 and 21 members of the unit in December 1980.

[4] In addition to Jeffries Lithograph, Ticor controls Jeffries Banknote Company in southern California; Fidelity Printing in Houston, Texas; Charles P. Young Company in Chicago, Illinois; and Charles P. Young Company in New York City, New York.

the direct mail industry such as high quality merchandising catalogues, as well as inserts such as magazine inserts. The printing of these products required the acquisition of a heat-set web operation. Jack Hubbs, then vice president of operations for Ticor Printing Group,[5] had heard that the Sollima brothers were interested in selling Biltmore Press. Biltmore Press had a four-color Hantscho press and had ordered a six-color Hantscho press. These presses were the type of operating equipment sought by Ticor. There was a large back order for six-color Hantscho presses and Biltmore Press was close to getting their order filled by Hantscho at a fixed price. Ticor entered negotiations to purchase Biltmore Press in April or May 1980 and assigned Jack Hubbs and Aaron Rosen[6] to bargain with the Sollimas. The Sollima brothers wanted to sell all their stock. The Ticor representatives determined, after reviewing the books of Biltmore Press, that they would purchase only some selected assets.

The parties agreed to terms and signed an agreement for the purchase of assets on November 25, 1980. The assets specifically excluded from the sale are "seller's accounts receivable, inventory, work in progress, finished goods, unbilled receivables, securities, choses in action and cash." Other assets not purchased by Ticor were the name of the Company, goodwill, and Biltmore's plant-site. These items were excluded from the purchase because, Ticor asserts, it did not want its business connected with Biltmore, and to assure such disassociation, agreed to delay closing until December 22 to permit the Sollimas to complete their work in progress. The agreement also contains a 3-year noncompetition provision and a 1-year consultation agreement, whereby the Sollima brothers agreed as follows:

> CONSULTANT agrees to serve as a consultant to TPG in the field of commercial printing and most particularly in the relocation of the equipment presently located at 1123 East Walnut Street, Carson, California to TPG's new location in Carson; the installation and operation of a new six-color Hantscho press and related equipment and the introduction to existing customers of Biltmore Press (hereinafter sometimes called "FIELD"), and to make his services available to TPG as may be required from time to time during the term in accordance with the provisions of this Agreement.[7]

Sollima was never requested to make his services available to the purchaser pursuant to the agreement or otherwise.[8]

On December 5, Biltmore Press notified its employees by letter that they were being permanently laid off, with December 19, 1980, being their last working day. Prior to the receipt of this letter, the employees were told by Clark that the Company was going to be sold. Clark also informed the employees, prior to the receipt of the layoff letter as well as subsequent thereto, that there was a possibility that Jeffries Lithograph would hire them. Jeffries Lithograph Company placed help wanted advertisements in the Los Angeles Times and the Daily Breeze which ran in their respective editions of Sunday, December 7.[9] In addition to interviewing all individuals who responded to the advertisement, representatives of the Company interviewed all of Biltmore's employees, as here pertinent. Interviews were conducted on December 12, 1980.

During the interviews of approximately 65 applicants, including the Biltmore employees, the interviewees were informed that Jeffries Lithograph was a new company, a subsidiary of Ticor and an affiliate of Jeffries Banknote Company as well as other printing companies. The interviewees were also informed that the Company projected sales of $8 million for 1981 and expected to have 100 employees by the end of the year; however, they would commence operation with about 30 employees. Further, the prospective employees were informed that Respondent was going to lease Biltmore's building for about 6 months and then was going to move into a much larger plant located on Sandhill, which was about a block and a half away from the Biltmore location. Also, the interviewees were told that the Company had a six-color press on order which they expected to receive in June and have installed in the new facility by September. None of the job applicants was informed on the date of the interviews if they were hired.

The applicants from Biltmore were told what wages and other terms and conditions[10] of employment would be if they were hired. On December 15, the Biltmore employees individually received telephone messages from Respondent and were all told that they were hired by Jeffries Lithograph. Rosson was told he would be making $15.53 an hour,[11] which was the wage described during the December 12 interview, and that he was to report to work on January 5, 1981. Biltmore press ceased operations on December 18, 1980. Based on Rosson's uncontroverted testimony, it is found that Respondent hired between 19 and 21 Biltmore employees, including Clark, a supervisor. Biltmore asked Ticor to hire their

[5] At the time he testified, he was president of Jeffries Banknote Company.

[6] Rosen was associate general counsel of Ticor, the parent company of Ticor Printing Group at the time the sale was negotiated. He is currently vice president, secretary, and general counsel of Ticor Printing Group, Inc. The testimony did not clearly delineate which business entity was referred to when the name Ticor was used, since it appears the appellation Ticor is used to refer both to Ticor Printing Group, Inc., and its parent company, Ticor.

[7] While the consulting agreement was part of the terms of the purchase and sale agreement, the consulting agreement was not executed until December 22, 1980, the closing date.

[8] However, the sale agreement provided that he receive reimbursement, which he did, whether or not he performed any duties under the contract.

[9] The positions offered in the advertisement in the Daily Breeze included: strippers, camera and scanner operators, dot edgers, platemakers, web and sheet feed operators, cutter operators, folder operators, stitcher operators, and hand operators.

[10] For example, they were told "a little about the insurance program and vacation benefits."

[11] Rosson was earning $17.25 an hour at Biltmore. There is no allegation that Respondent unilaterally changed the terms and conditions of employment. Therefore, this matter is not considered in issue.

employees if they could, but such hiring was not a condition of sale.

According to Rosson, the only changes in his working conditions when he started his employment with Respondent were that his working hours increased from 35 to 40 per week and his pay changed. Respondent used a different insurance company but did not detail any differences in coverage.

About the same time Biltmore's employees received their layoff notices, Douglas T. Maloney and Harold Ekmanian, president and vice president of the Union, respectively, met with the Sollima brothers to ascertain the status of the negotiations with Ticor for the sale of Biltmore Press. The Sollima brothers said that Biltmore Press was for sale but they would not disclose any details about potential buyers or terms of the sale for that was considered confidential information.[12] Biltmore Press did not inform any union official about the sale when agreement was reached. On January 14, 1981, Maloney wrote Art Sollima a letter asking for information "regarding the recent changes in the status of Biltmore." Art Sollima replied on January 27, 1981, stating that Ticor Corporation purchased Biltmore Press on December 19, 1980. The Union also wrote Art Sollima a letter, dated January 3, 1981, informing him that the union was initiating a grievance on behalf of all the bargaining unit members "requesting that you comply with the terms of the current labor contract."

On February 20, 1981, the Union wrote Hugh McDonald, president of Jeffries Lithograph, a letter demanding recognition of the representative of the lithographic production employees and requesting a meeting to arrange for Respondent to "implement the area lithographic contract . . . ." McDonald replied to this letter on March 4, advising the Union that the Company refused to recognize the Union as the representative of their lithographic production employees. On March 5, 1981, Maloney again wrote McDonald demanding recognition and requesting a meeting to arrange for implementation of the area lithographic contract. This letter was returned to the Union unopened and marked "not accepted." The letter did not have postage and the Company refused to pay such postage.

William Kerwin, a special representative of the Union, went to Respondent's plant on April 3, 1981, accompanied by an unemployed member and asked to see McDonald. McDonald refused to meet with Kerwin and refused to accept the previously tendered March 25 letter, replying that he had clearly responded to the Union's request. Kerwin was informed that there was no further need for his presence and he was asked to leave. McDonald did not meet with him that day. The same day, April 25, the Union sent McDonald a mailgram demanding recognition as the representative of the Company's production and maintenance employees and requesting a meeting "to arrange for you to implement the area lithographic contract . . . ." McDonald, on April 24, replied to the mailgram, advising the Union "that the company declines to recognize Local 262 as the representative of our production and maintenance employees."

Counsel for the General Counsel asserts that the Union made an efficacious demand for recognition on April 23, 1981, and that Respondent, as a successor employer who had hired a majority of its employees on the date the Union demanded recognition from the production employees, must recognize and bargain with the Union. On April 23, Respondent had approximately 31 employees, of which approximately 63 percent were former employees of Biltmore Press.

Respondent asserts that even prior to the consummation of the purchase and sale agreement it had contemplated and implemented substantial and very material alterations in operations and had not reached the intended full employee complement of 100 workers on the date the Union demanded recognition.In October 1980, McDonald was approached by the chairman of Ticor Printing Corporation, Bob Vanderlip, to become the president of Jeffries Lithograph. McDonald accepted the position on November 30, 1980, after considerable study regarding the potentials of the position and company. *Pro forma* financial statements, forecasts, and projections indicated that Respondent would realize a gross income of $8.9 million in the first year of operation and the projections of gross income exceed $17 million for the second year of operation. To accomplish these goals, it was decided to keep the four-color Hantscho press rather than trading it in when they received the six-color Hantscho press. The Company also modified the order for the six-color press by adding a double roll stand and adding a second oven to accommodate both rolls.[13] The oven on the four-color press was lengthened and the Company also decided to purchase a finishing line.[14] The finishing line permitted the production of 500 different items which could not otherwise have been produced at a competitive price with a reasonable expenditure of time, effort, and money. Biltmore Press did not have a finishing line. The lengthening of the ovens permits the production of finer quality products. They improved the laser scanner purchased from Biltmore. After the six-color press was delivered, Respondent added to it another $600,000 in capital improvements. The exact nature of these improvements was unexplained and Respondent did not delineate any differences in its modifications made to the press after delivery from the modifications made in the order as placed by Biltmore or if these modifications were effected before or after delivery.

The equipment acquired by Respondent would not fit into Biltmore's plant, which was approximately 25,000 square feet and, in anticipation of the problem, the Company leased a newly constructed building about a block and a half away on Sandhill which contained 101,000 square feet.[15] The interior of the Sandhill building, when

[12] This evidence, according to counsel for the General Counsel, was proffered solely as background information.

[13] This addition almost doubles the capacity of the press.

[14] The equipment for the finishing line cost nearly $400,000 plus installation. Respondent's representatives spent a couple of months traveling around the country inspecting various finishing lines and by February determined what equipment they desired and ordered the finishing line equipment.

[15] The new building was not occupied solely by Respondent. The Ticor Printing Group also occupied a portion of the Sandhill building.

Continued

rented, was a mere shell. Respondent made substantial leasehold improvements, costing about $1.5 million, to prepare the building for occupancy, some of which were required by the local authorities to safely accommodate and operate the equipment. The Company moved into the Sandhill building in early October 1981.

McDonald, in December 1980, commenced hiring his management team[16] and planned for a substantial sales staff. Biltmore did not have any sales staff or comparable managerial positions with the possible exception of one or two foremen. The evidence does not indicate whether the Sollima brothers and various other employees performed these same functions, albeit they may not have been designated supervisors or salesmen. When Respondent commenced operations, it had 28 to 30 employees on January 5, 1981, of which 19 were production or maintenance employees. They estimated that a full staff would be comprised of 65 to 70 production unit employees and about 35 sales, administrative, and other noproduction and maintenance employees. Respondent attained its full complement of employees in October 1981. Some of the salespersons are located outside of southern California[17] to permit Respondent to conduct business nationwide.[18] Respondent represented that Biltmore did not service nationwide accounts and McDonald admitted he had difficulty estimating how much business he could directly attribute to their taking over Biltmore's assets, but opined that a few jobs may have come to them because of this relationship, estimating anywhere between $40,000 and $70,000. The names of these possible customers and/or the nature of the services provided was not mentioned by Respondent. McDonald also testified that Respondent did not actively seek business from Biltmore's unnamed former clients but he is sure that his sales staff may have called on some of them as Jeffries Lithograph without reference to any affiliation or succession to Biltmore's equipment or location.

Analysis and Conclusions

The threshold issue in this case is whether Respondent is the legal successor of Biltmore Press. The Board stated the definition and nature of the obligations attendant to the finding of a successorship in *Mondovi Foods Corporation*, 235 NLRB 1080, 1082 (1978), as follows:

> When all or part of a business is sold, certain legal obligations of the seller devolve upon the purchaser. Where there is substantial continuity in the identity of the employing enterprise, one such obligation will be that of the employer to recognize and bargain with a union which represents the former owner's employees. However, if in the course of the transfer there have been substantial and material changes in the employing enterprise, the new employer will not be found to have succeeded to the bargaining obligation of the former employer.[4]
>
> In cases involving the successorship issue, the Board's key consideration is "whether it may reasonably be assumed that, as a result of transitional changes, the employees' desires concerning unionization [have] likely changed."[5] The Board considers a variety of factors in determining whether the new employer has succeeded to the former employer's bargaining obligation. Certainly a prime factor is whether the purchaser has hired a sufficient number of former employees of the seller to constitute a majority of the employee complement of the appropriate unit.[6]

[4] *Lincoln Private Police, Inc.*, 189 NLRB 717 (1971).

[5] *Ranch-Way, Inc.*, 183 NLRB 1168, 1169 (1970).

[6] See *N.L.R.B.* v. *Burns, supra; Howard Johnson Co., Inc.* v. *Detroit Local Joint Executive Board, Hotel & Restaurant Employees & Bartenders International Union, AFL–CIO*, 417 U.S. 249 (1974); *Spruce Up Corporation*, 209 NLRB 194 (1974).

Therefore, the first matter to be determined is whether there have been "substantial and material changes in the employing enterprise."

The factors considered in determining if there is a continuity of the employing industry include:

> whether (1) there has been a substantial continuity of the same business operations; (2) the new employer uses the same plant; (3) the same or substantially the same work force is employed; (4) the same jobs exist under the same working conditions; (5) the same supervisors are employed; (6) the same machinery, equipment, and methods of production are used: and (7) the same product is manufactured or the same services offered. Not all of these criteria need be present to warrant a finding of continuation of the employment industry.[19]
>
> The finding is based on a consideration of the totality of circumstances . . . .[20]

Respondent argues that, from the origins of its proposal to acquire certain property of Biltmore Press, it elected to conduct a business that was substantially and fundamentally different than Biltmore. The record shows that Jeffries Lithograph purchased Blltmore's assets but did not assume any of its obligations other than to do a job of Biltmore's which was found to be unsatisfactory. There were several modifications in the equipment purchased from Biltmore or ordered by Biltmore.

The total number of employees Ticor moved into the building was not placed in evidence. There was only the statement that Ticor Group consisted of "three people and their secretaries." Jeffries Banknote stored a considerable amount of mateiral in the Sandhill building also. Respondent failed to indicate the amount of space it actually occupied in the Sandhill building.

[16] Including vice president, administration and finance, chief estimator, estimator, 10 salesmen, customer service manager, 2 customer service representatives, scheduler, prep supervisor, press supervisor, bindery supervisor, 2 press foremen, prep foreman, bindery foreman, and plant superintendent.

[17] One in San Francisco, one in Washington, D.C., three in Boston, Massachusetts, one in Dallas, Texas, and one in New York, New York.

[18] Some of the national customers are Harchow merchandising catalogues, Nieman-Marcus, Bloodmingdale's, and Browning firearms.

[19] *Georgetown Stainless Mfg. Corp.*, 198 NLRB 234 (1972).

[20] Cf. *N.L.R.B.* v. *Security-Columbian Banknote Co.*, 541 F.2d 135 (3d Cir. 1976); *Contract Carrier, Inc.*, 258 NLRB 353 (1981); *Landmark International Trucks, Inc.*, 257 NLRB 1375 (1981); *Barclay Hospital, Inc.*, 247 NLRB 1023 (1980), enfd. *Illinois Health Services, Inc., d/b/a Barclay Hospital* v. *N.L.R.B.*, 108 LRRM 3252 (7th Cir. 1981), cert. denied 50 USLW 3486 December 14, 1980; *Radiant Fashions, Inc.*, 202 NLRB 938 (1973).

However, I find that the operating differences detailed by Respondent are not sufficient to warrant concluding that the nature of the employer's industry changed or was rendered inappropriate for continued representation of the collective-bargaining unit by the Union. Both Jeffries Lithograph and Biltmore Press were commercial printers. While Respondent asserts that it obtained equipment which permitted the production of products different than those produced by Biltmore, there was no showing that these different products were in fact produced, facts within Respondent's purview to provide for the record. There were no client lists presented from Biltmore Press, and only a few of Respondent's clients were named; therefore, there is no evidence of record to permit a conclusion that a different class or category of customers was served over a different geographic area. All the production and maintenance employees were employed and initially supervised by the same foreman, Wayne Clark. Although Respondent projected gross revenues almost four times greater than those experienced by Biltmore, there were no projections of Biltmore's anticipated gross revenues after it received the six-color press. Further, Respondent commenced operations in the same facility as its predecessor, using the same work force, supervised by the same man, with no showing of change in the employees' duties. Even after the new equipment was installed and operations moved to the Sandhill facility, there was no showing that these employees' job duties were altered from those performed while they were employed by Biltmore. Respondent made substantial changes in managerial and sales operations; however, there was no showing that such changes were of such a magnitude or nature as to substantially alter the identity of the employing enterprise, or the job duties of the employees. As stated by the Board in *Ranch-Way, Inc.*, 183 NLRB 1168 (1970), "the key test in determining whether a change in the employing industry has occurred is whether it may reasonably be assumed that, as a result of transitional changes, the employees' desires concerning unionization have likely changed." Cf. *Zim's IGA Foodliners*, 201 NLRB 905, 909, enfd. 495 F.2d 1131 (7th Cir. 1974), cert. denied 419 U.S. 838; *N.L.R.B.* v. *Burns International Security Services, Inc.* 406 U.S. 272 (1972); and *Premium Foods, Inc.*, 206 NLRB 896 (1982).[21] These facts within the purview of Respondent that the changes it implemented were of such a character or magnitude as to change the products, employee classification or duties or working conditions, were not presented in evidence. Accordingly, it is found that there has not been a substantial change in the employing enterprise, and that Respondent is the successor-employer of the production and maintenance employees when it commenced operations at Biltmore Press' facilities.

The 2-week hiatus in operations between the closing of Biltmore Press and the commencement of operations by Respondent is not significant in this case for the employees were already informed, prior to the closing, that they would be hired; therefore there was no indication that this transitional period altered employee expectations or desires concerning union representation. See *Pre-Engineered Building Products, Inc.*, 228 NLRB 841 (1977). Similarly, the change in location by Respondent 9 months after commencing operations was of such a short distance and occurred so long after the acquisition of assets that it could not be held to have altered employee expectations regarding employment or working conditions.[22] The proposed and actual increases in the number of employees performing the unit's work were not of such a magnitude as to warrant a finding of altered employee expectations. See *Mondovi Foods Corp., supra*, 235 NLR8 1080, 1082 (1978).

The Union made an efficacious bargaining demand on April 23, 1981, when Jeffries' total employee complement was about 31, of which about 19 or 63 percent were former Biltmore employees. Therefore, the next issue was whether Respondent had achieved a sufficient alteration in its employee complement on April 23, 1981, as to abrogate or nullify its bargaining obligation under Section 8(d) of the Act. By October 1981, Respondent had 65 production employees and a total of 96 employees, and its employee complement remained at about that level thereafter.[23]

Respondent, citing *N.L.R.B.* v. *Burns International Security Services, Inc., supra*, 406 U.S. 272, 294, 295,[24] argues that the time to determine majority representation is "only when the new employer has hired its full complement of employees." Counsel for the General Counsel, in his oral argument, asserts that the proper time to determine the majority status of the Union is the date the Union demands recognition. Citing *Pre-Engineering Building Products, Inc., supra*, fn. 1, and *Pacific Hide & Fur Depot, Inc.*, 223 NLRB 1029 (1976), enforcement denied 553 F.2d 609 (9th Cir. 1977). As noted by Respondent, counsel for the General Counsel does not argue that "a perfectly clear," *Burns, supra* at 294–295,

[21] Respondent cites *Woodrich Industries, Inc.*, 246 NLRB 43 (1979), to support its argument that it is not a successor for the nature of the employing industry had been sufficiently altered. In *Woodrich, ibid.*, unlike the instant case, Respondent demonstrated that there were actual differences in the products manufactured, where here we only have the evidence of record going solely to the capability to manufacture a broader range of products, with no showing that such products were in fact produced. There was no showing that the customers served had different requirements or that there were differences in the materials and supplies used by Respondent. There was no showing of differences in the jobs and working conditions under Respondent or that the additions to its employee complement, as here pertinent, were in different job classifications or categories compared to the former Biltmore Press production and maintenance employees.

[22] The move 1-1/2 blocks away from the Biltmore Press location is not such a change of locale as to render the continuation of the unit inappropriate or to abrogate the bargaining obligation. See *Aaron Brothers Corporation, a Division of Chromalloy American Corporation*, 245 NLRB 29 (1979).

[23] In the following months, there were minimal fluctuations in the employee complement with October being equal with January 1982 for production staffing and December representing the peak of 70 production employees.

[24] The Court held, in *Burns*, that:

> [I]t may not be clear until the successor employer has hired his full complement of employees that he has a duty to bargain with a union, since it will not be evident until then that the bargaining representative represents a majority of the employees in the unit as required by Sec. 9(a) of the Act, 29 U.S.C. Sec. 159(a).

holding is applicable in this proceeding.[25] Rather, as noted above, counsel for the General Counsel asserts that the duty to bargain commenced on the date the Union demanded recognition.

As noted in *Pacific Hide & Fur Depot, Inc.* v. *N.L.R.B., supra* at 613:

> The problem then becomes one of defining what is meant by a full complement. That cannot be done by the application of a mathematical formula but only by considering the facts of each case in light of the general goal which is sought—to assume majority rule within the new employer's unit as to whether and if so with what union there must be collective bargaining.

Respondent argues that from the outset of the acquisition of Biltmore's assets it intended to achieve an employee complement of 100 workers, of which about 65 were to be production employees once it moved into the Sandhill facility; and that by October 1981, about 10 months after commencing operations, it did achieve that level of employees. It also noted that its level of employment plateaued between October 1981 and March 1982 at these figures, indicating that the initial projection was an accurate reflection of the "full complement."

The length of time it took to reach the full complement of employees cannot be delayed indefinitely. As found in *N.L.R.B.* v. *Hudson River Aggregates*, 639 F.2d 865, 870 (1980):

> But we do not believe that an employer may always delay its bargaining obligations until it has expanded its business to the proportions contemplated when it purchased the enterprise. Although HRA contends that it did not hire a "full complement" of employees until November 1978, we have found no decision postponing determination of a successor employer's bargaining obligation for so long an interval following the commencement of its operations. Cf. *Pacific Hide & Fur Depot, Inc.* v. *N.L.R.B.*, 553 F.2d 609, 614 (9th Cir. 1977) (emphasizing that time at which successor employer held to have hired "full complement" was less than sixty days after it commenced operations). In this case, where HRA was not rebuilding a collapsed operation, but rather starting up the business essentially as it was when sold by Martin Marietta—though concededly HRA had plans for expansion—we think that the Board properly found that the 43 employees at work on April 17 were a representative complement of HRA's work force.

[25] "Although a successor employer is ordinarily free to set initial terms on which it will hire the employees of a predecessor, there will be instances in which it is perfectly clear that the new employer plans to retain all of the employees in the unit and in which it will be appropriate to have him initially consult with the employees' bargaining representative before he fixes terms. In other situations, however, it may not be clear until the successor employer has hired his full complement of employees that he has a duty to bargain with a union, since it will not be evident until then that the bargaining representative represents a majority of the employees in the unit as required by Sec. 9(a) of the Act, 29 U.S.C. Sec. 159(a)."

The date of demand in the instant proceeding was April 23, 1981, about 3-1/2 months after Respondent commenced operations. Inasmuch as Respondent chose to hire its predecessor's full complement of employees, and such employees remained a majority of the complement of production and maintenance employees on the date of demand, it appears unwarranted to cause the employees to wait another 6-1/2 months for a determination of majority support and Respondent's obligation to bargain with those employees' recognized representative. By April, the ordered equipment had not been delivered, and Respondent did not adduce what building code requirements had been met by that date. Therefore, considering the extent of plant and equipment modification, the magnitude of work involved in moving and installing the equipment, the exigencies of the economic climate renders Respondent's projections of employee complement on the date of demand too indefinite and speculative to warrant a finding that the employee complement on April 23, 1981, was not representative or was insubstantial. Also, there was a transfer of all the predecessor's employees to the Company without an accompanying change in the character of their jobs, and there was no showing that the contemplated increase in staff will have different obligations or job classifications. Accordingly, it is found, under the circumstances of this proceeding, that there is no showing why it should be presumed "the employees' desires concerning unionization [have] likely changed."[26] As noted in *Premium Foods, Inc.*, 260 NLRB 708, 718 (1982):

> Nor did subsequent eventualities, which included the launching of a new food service item in January, the resultant hire of one full-time and two part-time employees, and the achievement after less than 10 months of operating experience of an expanded complement of 13 employees, serve to so change the nature of the operation or the size of the complement as to invalidate the use of the full-scale operations/representative complement criterion for fixing the date for determining the Union's majority status. See, *Pre-Engineered Building Products, Inc.*, 228 NLRB 841, fn. 1 (1977).

Based on the foregoing findings of fact and principles of law, I find that Respondent, as a legal successor to Biltmore Press, was, on April 23, 1981, and for some time thereafter, an employer of a sufficiently representative complement of maintenance and production employees who were former employees of Biltmore Press and represented by the Union in its capacity as their exclusive collective-bargaining representative, had a duty, pursuant to the Union's demand, to recognize and bargain with the Union. Respondent's failure and refusal to recognize and bargain with the Union as the authorized representative of a majority of its employees in the unit herein found appropriate for collective bargaining, is violative of Section 8(a)(5) and (1) of the Act.

[26] *Ranch-Way, Inc., supra.* Cf. *Mondovi Foods Corporation, supra,* and *Pre-Engineered Building Products, Inc., supra.*

CONCLUSIONS OF LAW

1. Jeffries Lithograph Company, a subsidiary of Ticor Printing Corporation, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Graphic Arts International Union, Local 262, Graphic Arts International Union, AFL-CIO-CLC, is a labor organization within the meaning of Section 2(5) of the Act.

3. The following described unit is a unit appropriate for the purposes of collective bargaining:

> All full time employees performing any work, processes, operations and products directly related to Lithography, Offset (including dry or wet), Photoengraving, intaglio, gravure, binding and finishing, including any technological or other change, evolution of or substitution for any work process, operation or product now utilized; excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

4. At all times on and after April 23, 1981, the Union has been the exclusive collective-bargaining representative of the employees in the unit described above.

5. Respondent is a successor of Biltmore Press and, as of April 23, 1981, had employed a sufficiently representative complement of production and maintenance employees to operate its Carson, California, plant.

6. On April 23, 1981, the Union made a valid demand for recognition and bargaining, which demand Respondent refused, and continues to refuse.

7. By failing and refusing on and after April 23, 1981, to recognize and bargain with the Union as the representative of the employees in the unit described above, Respondent violated Section 8(a)(5) and (1) of the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the Union after August 26, I shall recommend that they be ordered to recognize and bargain with the Union upon request.

Upon the foregoing findings of fact, conclusions of law, and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[27]

The Respondent, Jeffries Lithograph Company, a subsidiary of Ticor Printing Group, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to recognize and bargain collectively with Graphic Arts International Union, Local 262, Graphic Arts International Union, AFL-CIO-CLC, as the exclusive collective-bargaining representative of employees described below:

> All full time employees performing any work, processes, operations and products directly related to Lithography, Offset (including dry or wet), Photoengraving, intaglio, gravure, binding and finishing, including any technological or other change, evolution of or substitution for any work process, operation or product now utilized; excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action deemed necessary to effectuate the policies of the Act:

(a) Upon request, bargain collectively with Graphic Arts International Union, Local 262, Graphic Arts International Union, AFL-CIO-CLC, as the exclusive representative of all employees in the unit described above, and if an understanding is reached, embody it in a signed agreement.

(b) Post at its plant in Carson, California, copies of the attached notice marked "Appendix."[28] Copies of said notice, on forms provided by the Regional Director for Region 21, after being duly signed by its representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by it to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 21, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

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[27] In the event no exceptions are filed as provided in Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[28] In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."